

REMARKS/ARGUMENTS

1. NON-PRIOR ART MATTERS.

- a. The Office Action objected to the drawings for various reasons.

Appropriate corrections have been made and the proposed corrections are enclosed for the draftsman's review.

2. PRIOR ART MATTERS

- a. The Office Action rejected claims 1-20 under 35 USC 103(a) as being unpatentable over Sederberg in view of Ramun. Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.¹ If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.²

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.³

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

The reference does not teach or suggest all the claim limitations.

As to claim 1, Sederberg does not teach an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing. Furthermore, the boss 98 of Sederberg would prevent the cross blade 94 from

¹MPEP Sec. 2142.

² Id.

³Id. (emphasis supplied)

being rotated to a position that would expose two of the cutting surfaces. Clearly, the construction of Sederberg teaches away from a cross blade with four cutting surfaces that can be rotated for successive exposure and shearing. There would, therefore, be no motivation to combine the Ramun reference with Sederberg.

Claim 1 is therefore allowable.

Claims 2-11 contain additional elements or limitations beyond allowable claim 1 and are also allowable.

Claim 12 is allowable for the reasons given above in regard to claim 1.

Claim 13 has been cancelled and its limitations have been incorporated into claim 12.

Claims 14-16 contain additional elements or limitations beyond allowable claim 12 and are also allowable.

In addition to the reasons given above for allowability, claim 17 is allowable because the references do not teach or disclose a cross blade forming a first angle between one and thirty degrees with the tie plate.

Sederberg in fact teaches away from such a construction at col. 5 line 57 to col. 6 line 4, where it is stated that the outer end wall 32 and other components (which would include the cross blade 94) "extend in planes parallel to the reference plane defined by the proximal end shoulder 58." No other construction is disclosed. Since Sederberg requires the cross blade to be parallel to the end shoulder 58, it teaches away from Applicant's claimed construction wherein the cross blade is positioned at an angle to the tie plate 54. Furthermore, the boss 98 of Sederberg would not allow the cross blade to be positioned at an angle to the outer end wall 32 and still be seated firmly against the shim 96 and the inside surface of the outer end wall 32.

Claim 17 is allowable for the reasons given above in regard to claim 1.

Claim 18 has been cancelled and its limitations have been incorporated into claim 17.

Claims 19-20 contain additional elements or limitations beyond allowable claim 17 and are also allowable.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

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Version With Markings to Show Changes Made

In the claims:

Claims 13 and 18 have been cancelled.

Claims 12 and 17 have been amended as follows:

12. (Amended) A heavy-duty demolition apparatus for attachment to the boom structure and hydraulic system of an excavator, comprising:

(a) a lower jaw and an upper jaw and pivot means interconnecting the jaws together, means for attachment to the boom structure of the excavator, the upper jaw having an upper shear blade, the lower jaw having at least one lower shear blade, the lower jaw also having a rigid guide blade lying along the lower shear blade and in spaced relation therewith, the outer ends of the shear blade and guide blade being adjacent each other, and a tie plate securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and the upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw; [and]

(b) an indexable, replaceable piercing and shearing tip removably mounted in a seat at the distal end of the upper jaw; further comprising an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing.

17. (Amended) A heavy-duty demolition apparatus for attachment to the boom structure and hydraulic system of an excavator, comprising:

(a) a lower jaw and an upper jaw and pivot means interconnecting the jaws together, means for attachment to the boom structure of the excavator, the upper jaw having an upper shear blade, the lower jaw having at least one lower shear blade, the lower jaw also having a rigid guide blade lying along the lower shear blade and in spaced relation therewith, the outer ends of the shear blade and guide blade being adjacent each other, and a tie plate securing the outer ends of the lower shear blade and the guide blade together, further comprising an open slot between the lower shear blade and the adjacent guide blade to receive the upper shear blade therein, and the upper jaw having means for attachment to the hydraulic system of the excavator for closing and opening the upper jaw relative to the lower jaw; the lower jaw and the upper jaw shearing a workpiece when the upper jaw is closed upon the lower jaw;

(b) an indexable, rotatable cross blade removably mounted to the inside of the tie plate substantially transverse to the lower shear blade and to the guide blade, the cross blade having four cutting surfaces for successive exposure and shearing;
[and]

(c) an indexable, replaceable piercing and shearing tip removably mounted in a seat at the distal end of the upper jaw; and [.]

(d) wherein the cross blade and the tie plate form a first angle therebetween between one and thirty degrees.